

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 6596 of 1988

For Approval and Signature:

HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ? YES

2 To be referred to the Reporter or not ? YES

3 Whether their Lordships wish to see the fair copy
of the judgment ? NO

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ? NO

5 Whether it is to be circulated to the civil judge
? NO

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ATUL PRODUCTS LTD. & 1 - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MRS YOGINI V PARIKH for Petitioners
MS PAURAMI SHETH, AGP for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 29/08/2006

ORAL JUDGMENT

1.This petition challenges the decision of the State Level Committee, Ahmedabad in its 119th Meeting was held on 28th January, 1988, cancelling the sanction of cash subsidy made in

favour of the petitioner in respect of its Dinitro Chloro Benzene (DNCB) Project as well as calling upon the petitioner Company to pay to the State Government an amount of Rs.19,38,300/- disbursed to it as cash subsidy in respect of its Sulphuric Acid Plant. The said decision was communicated to the petitioner vide letter dated 21st / 28th April, 1988.

2. The petitioner No.1 (hereinafter referred to as "the petitioner Company") is a Company incorporated and registered under the Indian Companies Act, 1913 in the year 1947 and therefore, it is an existing Company under the Companies Act, 1956. The petitioner Company is engaged in the business of manufacturing dyestuffs amongst other chemicals.
3. By a resolution No.NSC-1076-7637(1)-J dated 22nd December, 1977, the Government of Gujarat announced a State Cash Subsidy Scheme for new industrial units to be set up in developing areas. The said Scheme was to come into effect from 1st November, 1977 and remain in force for a period of five years. In the year 1979, during the operative period of the aforesaid cash subsidy scheme, the petitioner Company put up an industrial unit for manufacture of Caustic Soda and the State Government accepted the same as a "new industrial unit" within the meaning of sub-clause (b) of Clause (iv) of Section 6 of the

Scheme and granted a subsidy of Rs.25 lakhs to the petitioner Company.

4. During the operative period of the aforesaid Cash Subsidy Scheme, the petitioner Company, vide letter dated 6th November, 1980 sought for certain clarifications from the Commissioner of Industries, Gujarat State on various points. The Commissioner of Industries gave his response to the said letter by a communication dated 1st May, 1981.

5. It appears that, on the basis of the clarification given by the Industries Commissioner, the petitioner Company made an application for Cash Subsidy in relation to its Sulphuric Acid Plant to the District Industries Centre, Valsad on 10th November, 1981. A further detailed application was submitted to the Centre on 27th September, 1982. The State Level Committee, in its 77th Meeting held on 9th June, 1983 sanctioned the cash subsidy of Rs.21,48,870/- which was communicated to the petitioner vide Industries Department letter dated 17th June, 1983. The full disbursement of cash subsidy was to be effected after the project was evaluated by the Gujarat Industrial Investment Corporation. Out of the sanctioned cash subsidy, Rs.19,38,000/- was disbursed to the petitioner Company and it is the case of the petitioner Company that Rs.2,10,570/- is still

payable to the petitioner Company.

6. During the operative period of the Scheme, the petitioner Company put up yet another new plant for manufacture of Dinitro Chloro Benzene (DNCB). The said project was taken up for implementation in the year 1979 and was commissioned in December 1982. The petitioner Company vide letter dated 28th April, 1983 addressed to the General Manager, District Industries Centre, Valsad applied for State Cash Subsidy in respect of the said Plant in the prescribed form under the State Cash Subsidy Scheme. The application was registered as Subsidy Registration No.6538. Pursuant to the aforesaid application, the matter was considered in detail and other procedures and formalities as contemplated under the Scheme were completed. Thereafter, the State Level Committee in its 81st Meeting held on 28th December, 1983, approved the application of the petitioner Company in respect of its DNCB Project, and an amount of Rs.13,48,300/- was sanctioned by way of cash subsidy to the petitioner Company. Pursuant to the aforesaid, the petitioner Company also executed a formal agreement in favour of the Government of Gujarat on 18th February, 1984.

7. Thereafter, the office of the Industries Commissioner raised query regarding IDR licence in respect of the said unit. The said office

also decided to get the project appraised by a financial institution viz. the Gujarat Industrial Investment Corporation (GIIC). GIIC completed the appraisal of the project and submitted its report in September 1985. The petitioner followed up the matter for disbursement of subsidy with the office of the Industries Commissioner through letters and personal visits. By a letter dated 1st May, 1986 the Industries Commissioner informed the petitioner company to appear for personal hearing on 13th May, 1986. It appears that the State Level Committee in its 99th Meeting held on 27th May, 1986 examined the petitioner's application for cash subsidy in relation to its DNCB plant and called for certain information from the Company as well as from the District Industries Centre for further consideration in the matter. The petitioner Company, by a letter dated 15th July, 1986 addressed to the Industries Commissioner, Ahmedabad clarified the entire matter and replied all the queries which were raised. It was also pointed out that the investment decision for putting up the unit was taken, inter alia, on the basis of availability of State Cash Subsidy as confirmed by Joint Industries Commissioner. Hence, it was not proper for the Industries Department to review and/or revise the interpretation of the definition of "new Industrial Unit" now.

8. By the impugned letter dated 21st/28th April, 1988, the petitioner Company was informed that the State Cash Subsidy sanctioned to its DNCB Unit was not disbursed as the issue was under further examination and that its case for its DNCB project was further discussed by the State Level Committee in its 119th Meeting held on 28th January, 1988 under the provisions of the State Cash Subsidy Scheme of 1977-82 and its Manual. It was stated that the State Level Committee had observed that the petitioner Company is an industrial undertaking and has already availed benefit by way of disbursement of State subsidy to the maximum permissible limit of Rs.25 lakhs under "C" Grade Growth Centre, and that, therefore, the State Level Committee had decided to cancel the sanction of Rs.13,48,500/- towards the State Cash Subsidy for the petitioner's DNCB project accorded in the 81st Meeting of the State Level Committee held on 28th December, 1983. It was further stated that, in view of this decision, the sanction order dated 18th January, 1984 was cancelled. Subsequently, by a letter dated 27th June, 1988, the petitioner was informed that, as per the provisions of State Cash Subsidy Scheme, 1977-82, the petitioner, as an industrial undertaking, would be eligible for subsidy at the rate of 15% of fixed capital investment or Rs.25 lakhs whichever was less, as the petitioner's location falls under Grade "C" Growth Centre. That the petitioner had availed

of total State Cash Subsidy of Rs.44,38,300/-, which had exceeded the permissible limit of Rs.25,00,000/- by an amount of Rs.19,38,300/-, which is liable to be recovered from the petitioner. In the circumstances, the petitioner Company was requested to refund the excess State subsidy of Rs.19,38,300/- paid to it.

9.The petitioner thereafter made several representations to the respondents justifying its claim, however, the sanctioned amount of cash subsidy was not disbursed to the petitioner. Being aggrieved by the aforesaid action of the respondent of cancelling the subsidy for its DNCB Unit and seeking to recover the amount of Rs.19,38,300/- paid to the petitioner in relation to its Sulphuric Acid Plant, the petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution of India.

10.Heard Ms.Yogini Parikh, learned advocate for the petitioner and Ms.Paurami Sheth, learned Assistant Government Pleader for the respondents.

11.Learned advocate for the petitioner assailed the impugned order dated 24th/28th April, 1988 as well as communication dated 27th June, 1988 on several counts. It was submitted that the impugned

order was based upon a total misreading and misinterpretation of the provisions of the Scheme. The learned advocate drew the attention of the Court to the Scheme framed vide Government Resolution dated 22nd December, 1977. Referring to the definition of "Industrial Unit" as defined under Clause 6(iv)(a) of the Scheme, which reads as under:

"[a] "Industrial Unit" means any industrial undertaking and suitable servicing unit, other than that run departmentally by the government of India / State Government. Decision as to whether a unit is an industrial unit or not shall be by of the Industries Commissioner."

it was submitted that, by virtue of the said provisions, the Industries Commissioner was the competent authority to decide as to whether the unit is an "industrial unit" or not.

[11.1] The learned advocate drew the attention of the Court to the letter dated 6th November, 1980 addressed by the petitioner to the Commissioner of Industries, whereby the petitioner had sought clarification from the said authority on various points. Paragraph 2 of the said communication, which is relevant for the purpose of the present petition, reads as under :

"We have obtained the State cash subsidy of Rs.25 lacs in respect of our Caustic Soda Expansion Plant in terms of Government of Gujarat Resolution No. MSC:1976:7637(1)-J dated 22nd December, 1977. We are not aware whether we are eligible to receive any State cash subsidy on our new Sulphuric Acid Plant to be commissioned in December, 1980 either in terms of aforesaid Government Resolution or any other scheme of cash subsidy of Gujarat Government. In case there is any amendment to the aforesaid Resolution No. MSC:1976:7637(1)-J dated 22nd December, 1977 for State cash subsidy, we shall thank you to kindly send us the above Resolution as amended upto date."

[11.2] The learned advocate submitted that, pursuant to the aforesaid queries raised by the petitioner, the Industries Commissioner had, by a communication dated 1st May, 1981, given his reply in the following terms :

"I am in receipt of your letter dated the 6th November, 1980 and regret the delay in reply. With regard to your question of whether Central Cash Subsidy can be given per project even if it is set up by the same Company, I am state this is so, provided there is no linkage between the

products of one investment and another investment on which subsidy has already been claimed. This would mean that an entrepreneur should not be permitted to derive additional benefit by having one license for manufacturing a product upto an intermediate stage and another license for manufacturing the finished products. They would also have to be separate licensed items.

However, with regard to the State Cash Subsidy, there is no stipulation and state cash subsidy would be admissible on each separate identifiable investment. With regard to Sales Tax exemption and deferment also, the exemption and deferment will apply to each separate investment, even if the Company is the same."

[11.3] It was submitted that the Industries Commissioner, who is the competent authority under the Scheme for the purpose of deciding as to whether the unit is an industrial unit or not, had opined in respect of a specific query raised by the petitioner that the State Cash Subsidy would be admissible on each separate identifiable investment, and that, cash subsidy can be given per project even if it is set up by the same Company. In the circumstances, it was not open to the State Level Committee to go beyond the decision of the competent authority and hold that the petitioner

Company was entitled to avail of the benefit of State subsidy to the extent of Rs.25 lakhs only in respect of all its industrial units as a whole.

[11.4] It was submitted that the State Government had declared a policy in respect of cash subsidy by virtue of the Government Resolution dated 22nd December, 1977. Acting upon the said declaration, the petitioners have changed their position and have spent huge amounts for putting up the industrial unit for the DNCB Project. The State Level Committee, after considering all relevant aspects, after due application of mind and following due procedure, had sanctioned subsidy of Rs.13,48,500/- in its 81st Meeting held on 28th December, 1983. Accordingly, the General Manager, District Industries Centre, Valsad issued a sanction letter dated 8th February, 1984 for payment of subsidy of the said amount. It was submitted that subsequent cancellation of the said sanction was violative of the petitioner's fundamental rights under Article 14 of the Constitution of India.

[11.5] The learned Advocate further referred to the definition of "new industrial unit" as defined under sub-section (b) of Clause 6(vi) of the Scheme, wherein a "new industrial unit" has been defined to mean an industrial

unit which has been commissioned on or after 1st November, 1977 or which has made fixed capital investment, as defined in sub-section (d) during the operative period of the Scheme. It was submitted that as per the said definition for an industrial unit to qualify as a new industrial unit it had to satisfy either of the two conditions precedent viz. (1) it should have been commissioned on or after 1st November, 1977 or (2) it should have made fixed capital investment as defined in sub-section (d) during the operative period of the Scheme. It was pointed out that both the industrial units of the petitioner company, namely the Sulphuric Acid Unit as well as the DNCB Unit, satisfy both the aforesaid alternative requirements in that fixed capital investment as defined under sub-section (d) had been made in respect of the said units within the operative period of the scheme and both the units have been commissioned after 1st November, 1977. It was further submitted that both the aforesaid units have been separately registered with the Directorate of Industries as required under clause (h) of section iv of the Scheme. It was urged that in the circumstances, both the aforesaid units having satisfied the requirements of the definition of "new industrial unit" as defined under the Scheme, are eligible as well as entitled to the benefit of cash subsidy under the scheme.

[11.6] It was submitted that the eligibility of the petitioner's DNCB Unit for subsidy under the Scheme had been fully examined and scrutinized by the competent authority, including the State Level Committee and thereafter, cash subsidy had been sanctioned in favour of the petitioner. However, subsequently, the Scheme is so interpreted as if the maximum cash subsidy is in respect of the entire operative period and it is also in respect of one Company which puts up its industrial unit, irrespective of the fact whether the said Company puts up its industrial unit and/or makes substantial expansion and/or diversification. It was submitted that such interpretation of the Scheme is on the face of it perverse, and is not bona fide. It was submitted that the State Level Committee has manifestly erred in interpreting the Scheme on irrelevant consideration and extraneous matters.

[11.7] It was submitted that the action of the respondents is not bona fide and the impugned decision appears to have been taken only with a view to avoid the liability of making payment of the amount due and payable to the petitioner under the Scheme.

[11.8] Learned advocate for the petitioner emphatically argued that, under the Scheme, the State Government is not empowered to review its

own decision. It was contended that it is well settled that the power of review must be conferred by the statute or as in the present case, under the Scheme. That, in absence of any such express power of review, the State Level Committee could not have reviewed its earlier order whereby subsidy had been sanctioned in favour of the petitioner. It was submitted that the impugned order reviewing the earlier order was *ultra vires* the Scheme and without jurisdiction.

[11.9] It was submitted that, without prejudice to the aforesaid contentions, assuming that the power of review is conferred under the Scheme, even then the same cannot be exercised without any cogent and convincing reasons or without the coming into existence of any new fact.

[11.10] Learned advocate for the petitioner submitted that the petitioner had relied upon the letter of approval dated 30th December, 1983 approving its application and the letter of sanction dated 18th January, 1984 sanctioning the amount of subsidy of Rs.13,48,300/- in respect of its DNCB Project. It was submitted that the State Government cannot arbitrarily withhold granting of the amount of subsidy on the ground that maximum subsidy amount has been paid to and availed of by the petitioner Company in respect

of capital investment made by it on two separate distinct units. It was contended that the declaration of the policy by the State Government by means of cash subsidy in question amounts to a promise made to all industries in the State and any action in contravention of the cash subsidy scheme would be illegal on the ground of principles of promissory estoppel.

[11.11] In support of her submissions, the learned advocate placed reliance upon the following decisions :

[a] Reliance was placed upon a decision of this Court in the matter of *Gujarat State Financial Corporation v. M/s Lotus Hotels Pvt. Ltd.*, 1982 (2) GLR 49, wherein, in the facts of the said case, the Court held that, after the appellant Corporation promised to advance a loan to the respondent Company, the respondent Company did certain acts whereby it altered its position to its detriment and, therefore, it is entitled to contend that the doctrine of promissory estoppel applies in its full vigour and the appellant Corporation should be directed to honour its commitment of advancing the loan in the manner agreed by and between the parties under the agreement.

[b] The decision of this Court in the case of *Ahmedabad Advance Mills Ltd. v. State of*

Gujarat, 1992(2) GLR 1232, was cited, wherein the Court held as under :

"Where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution."

[c] The decision of the Apex Court in the case of *Harbhajan Singh v. Karam Singh*, AIR 1966 SC 641 was cited for the proposition that, in absence of express power, an authority cannot review its previous order. It was submitted that the Scheme in question does not make any provision for review of an order passed by the State Level Committee whereby it has sanctioned cash subsidy. In the circumstances, the decision of the State Level Committee reviewing its earlier decision was *ultra vires* and without jurisdiction.

12.The learned Assistant Government Pleader Ms.Sheth submitted that subsidy was sanctioned

in respect of the petitioner's Caustic Soda Project on 24th January, 1980 and in respect of its Sulphuric Acid Project on 9th June, 1983. The application for subsidy in respect of DNCB Project was made on 28th April, 1983, whereas the reply of the Industries Commissioner on which strong reliance has been placed on behalf of the petitioners, is dated 1st May, 1981. It was argued that, from the aforesaid facts, it is apparent that no promise had been held out in respect of the petitioner's DNCB Plant, as is sought to be contended on behalf of the petitioner, in view of the fact that the explanation sought for by the petitioner was in respect of its Sulphuric Acid Plant.

[12.1] Referring to the definition of the term "expansion" under the Scheme of 1977, it was submitted that under the said Scheme, expansion and diversification were one; whereas under the subsequent Scheme of 1986, the meaning of expression "diversification" has been specifically clarified. It was submitted that both the Sulphuric Acid project as well as the DNCB project of the petitioner were projects and as such, fell within the ambit of the expression diversion under the Scheme and were not new units, as is sought to be contended on behalf of the petitioner. Referring to the application wherein against the column-unit, the name "Atul Products" has been stated, it was submitted that

Atul Products is the unit whereas the Sulphuric Acid and DNCB units are merely projects of the said Unit.

[12.2] Referring to clause (g) of the Scheme, which provides for eligibility under the Scheme, it was submitted that the State Level Committee was the only authority empowered to sanction loan, which includes power to rectify mistake. It was submitted that the sanctioning of subsidy in favour of the petitioner in excess of Rs.25 lakhs was a mistake and the Committee has, accordingly, rectified its mistake, which was permissible under the Scheme. It was submitted that there was no review on the merits of the petitioner's application, it was only a rectification of the mistake committed by the Committee in sanctioning subsidy in favour of the petitioner in excess of Rs.25 lakhs. It was submitted that the sanction was void ab-initio as being in contravention of the Scheme and as such, had rightly been cancelled by the Committee.

[12.3] As regards the powers of the State Level Committee to review its earlier decision, reference was again made to clause (g) of the Scheme, to submit that by virtue of the said provision, the State Government was duly empowered to review any of its decisions. It was submitted that incentives under the Scheme

being discretionary in nature, were always subject to review.

[12.4] Attention was drawn to the provisions of the subsequent Scheme introduced by the State Government viz., Capital Investment Subsidy Scheme for New Industries in Backward Areas, 1986, to submit that under the said Scheme a definition for the expression "diversification" had been introduced whereby "diversification" has been defined as the launching of a new product line under the same company, firm or partnership provided the fixed capital investment in such a diversification exceeds at least 25% of the net fixed assets of the original project. It was submitted that the said Scheme was partially modified by a Government Resolution dated 31st August, 1987 whereby it was provided that under the new scheme (86-91) an eligible unit shall be entitled to subsidy, as per rates prescribed in Annexure-D of the said Government Resolution dated 5th May, 1986 for each diversification irrespective of the number of diversifications, subject to financial limits as specified in Annexure-D for each diversification. It was contended, that in respect of the Scheme of 1977 under which the petitioner company is claiming subsidy, no such modification has been made. It was argued that, in absence of any such provision indicating that an industrial unit

would be entitled to subsidy in respect of each of its projects, the petitioner company is not entitled to subsidy in excess of 25 lakhs in respect of all its units as a whole.

[12.5] As regards the breach of principles of natural justice, it was submitted that since the sanction of subsidy was void ab-initio, and the same had not been disbursed, it was not necessary to give an opportunity of hearing. Besides, no useful purpose would have been served if an opportunity were given, as it would have been a mere exercise in futility. It was submitted that there can be no blanket proposition that in each and every case, opportunity of hearing is required to be given.

[12.6] As regards the opinion given by the Industries Commissioner by his letter dated 1st May, 1981, on which strong reliance has been placed by the petitioner, it was submitted that, merely because one officer has expressed a view, it does not bind the Government. It was further submitted that the said officer was not authorized to sanction the subsidy under the Scheme, hence, his opinion does not have much bearing in the matter. It was submitted that there is no ambiguity in the Scheme, hence, no question of interpreting the Scheme arises.

[12.7] Referring to clause (h) of the

Scheme, which lays down the procedure for claiming subsidy, it was submitted that the said provision provided for disbursement of cash subsidy to industrial units. It was submitted that the petitioner Company was required to be considered as an industrial unit and the various projects in respect of which cash subsidy has been claimed are merely projects of the said industrial unit. Hence, the petitioner is not entitled to separate cash subsidy in respect of each project for which it is registered, and as such, no intervention is called for in respect of the impugned decision of the State Level Committee.

13. Before entering into the merits of the case, it would be necessary to refer to various provisions of the Scheme. The New Industries Scheme for Cash Subsidy for industrial units to be set up in developing areas, which has been introduced by virtue of the Government Resolution dated 22nd December, 1977 is titled "The State Cash Subsidy Scheme for Industries". The said Scheme was brought into effect from 1st November, 1977 and was to remain in force for a period of five years. It was applicable to industrial units in "developing areas" indicated in Annexure "I" to the said resolution. "Industrial Unit" is defined under sub-clause (a) of Clause 6(iv) of the Scheme to mean any industrial undertaking and suitable servicing

unit, other than that run departmentally by the Government of India/State Government. It is further provided that the decision as to whether a unit is an industrial unit or not shall be by/of the Industries Commissioner.

[13.1] "New Industrial Unit" has been defined under sub-clause (b) to mean an industrial unit which has been commissioned on or after 1.11.1977 or which has made fixed capital investment as defined in sub-section (d) during the operative period of the Scheme.

[13.2] "Expansion" has been defined under sub-clause (c) to mean increase in the value of fixed capital investment of an industrial unit by not less than 25% for the purpose of expansion of capacity or modernization or diversification.

[13.3] Industrial units are eligible to avail of the benefit of cash subsidy under the Scheme provided they fulfill the conditions prescribed under clause (g) of the Scheme, which reads as under :

"[g] Eligibility :

New Industrial units engaged in manufacture of items listed in Annexure III are eligible to claim subsidy, according to the scale prescribed in (e) above, provided such industrial units are

located in areas specified in Annexure I. Government may review this list from time to time and remove, amend or add any item from the said list. Similarly, Government may review the scale of subsidy for any industry. Government may also review the Growth Centres given in Annexure II from time to time. In short, these incentives are given under the discretionary powers of the State Government and hence, they do not create any claims against Government enforceable in a Court of Law."

[13.4] Under Clause (h) of Section (iv) of the Scheme, which provides for the procedure for claiming subsidy, industrial units in selected areas are required to get themselves registered with the Directorate of Industries for becoming eligible to cash subsidy.

[13.5] Clause (i) of Section (iv) of the Scheme, which makes provision for disbursement of cash subsidy reads as under:

"The existing State Level Committee for Central Cash Subsidy will scrutinize and sanction the cash subsidy for medium and large scale industries. In respect of small scale industries, there will be a District Level Committee under the Chairmanship of the Collector-cum-Deputy

Commissioner of Industries to scrutinize and sanction the cash subsidy".

It is also provided that the Scheme shall be administered by the Commissioner of Industries according to the procedure to be prescribed.

[13.6] From the facts emerging from the record of the case, it is apparent that the petitioner was initially sanctioned cash subsidy of Rs.25 lakhs in respect of the industrial unit established by it for manufacture of Caustic Soda under the present Scheme. Thereafter, before setting up any other industrial unit, the petitioner sought clarification from the Industries Commissioner by its letter dated 6th November, 1980, requesting him to clarify as to whether the petitioner, who has obtained cash subsidy of Rs.25 lakhs in respect of its Caustic Soda expansion plant in terms of the Government Resolution dated 22nd December, 1977, was eligible to receive any cash subsidy in respect of its new Sulphuric Acid plant which was commissioned in December, 1980, either in terms of the said Government Resolution or any other Scheme of Cash Subsidy of the Government of Gujarat. In response to the aforesaid communication, the Industries Commissioner informed the petitioner that the State Cash Subsidy would be admissible on each separate

identifiable investment. Under the provisions of the Scheme, the Industries Commissioner being the competent authority to decide as to whether the unit is an industrial unit or not, would also be the competent authority to decide as to whether the Company as a whole is to be treated as an industrial unit or whether each separate unit set up by the Company is to be considered as an industrial unit under the Scheme. Accordingly, the Industries Commissioner, as competent authority, informed the petitioner that each separate unit would be entitled to cash subsidy under the State Scheme, and the petitioner acted upon the said opinion of the Industries Commissioner and set up its Sulphuric Acid unit, in respect of which cash subsidy was sanctioned by the State Level Committee in its 77th Meeting held on 9th June, 1983. Subsequently, the petitioner set up its DNCB unit, in respect of which cash subsidy was sanctioned by the State Level Committee in its 81st Meeting held on 28th December, 1983, pursuant to which, a sanction letter dated 8th February, 1984 was issued by the General Manager, District Industries Centre, Valsad. It may be pertinent to note, as is apparent from minutes of the various meetings of the State Level Committee, that the Industries Commissioner is the Chairman of the said Committee.

[13.7] From the aforesaid facts, it is

clear that the petitioner had acted on the basis of the opinion of the Industries Commissioner as a competent authority under the Scheme and had set up its Sulphuric Acid plant. The State Level Committee had also sanctioned the subsidy in respect of the same, despite the fact that the cash subsidy of Rs.25 lakhs had already been sanctioned in favour of the petitioner Company in respect of its Caustic Soda unit. Hence, at the relevant time, it appears that there was a consensus among all concerned that each separate project / unit is entitled to cash subsidy under the Scheme, provided that the same fulfills the requirements prescribed under the Scheme. In the background of the aforesaid facts, the petitioner, at the time of setting up its DNCB unit, and claiming subsidy with respect to the said unit, had no cause or reason to believe that it was not entitled to cash subsidy in respect of the same. Besides, the respondents, by sanctioning subsidy in respect of the petitioner's DNCB unit have fortified the belief of the petitioner that it is entitled to subsidy in respect of the said unit.

[13.8] After the operative period of the Scheme of 1977, the State Government has introduced a new Scheme known as the Capital Investment Subsidy Scheme for New Industries, 1986 which was operative from 1st April, 1986 and was to remain in force for a period of five

years upto 31st March, 1991. Under the said Scheme a new definition defining the expression "diversification" has been introduced which reads as under:

"diversification" means launching of a new product line under the same company, firm or partnership provided the fixed capital investment in such a diversification exceeds at least 25% of the net fixed assets of the original project."

By a Government Resolution dated 31st August, 1987, the new Scheme (1986-91) was partially modified by directing that, under the new Scheme, an eligible unit shall be entitled to subsidy, as per rates prescribed in Annexure "D" to the Government Resolution dated 5th May, 1986 for each diversification irrespective of number of diversifications, subject to financial limits as specified in Annexure "D" for each diversification.

[13.9] The learned Assistant Government Pleader has placed strong reliance upon the aforesaid modification of the New Scheme (1986-91) vide Government Resolution dated 31st August, 1987 to submit that as regards the New Scheme, there was a specific clarification to the effect that an eligible unit would be entitled to

subsidy for each diversification, irrespective of the number of diversifications subject to the financial limits specified for each diversification. However, insofar as the Scheme in question, viz. the Scheme of 1977 is concerned no such clarification had been issued by the Government. That in absence of any specific provision or clarification in the Scheme of 1977, that an eligible unit would be entitled to subsidy in respect of each diversification, irrespective of the number of diversifications, the petitioner company was not entitled to the benefit of cash subsidy by treating each of the eligible units set up by it during the operative period of the Scheme as a new industrial unit but that the company in its entirety is required to be treated as an industrial unit and would be eligible to a total subsidy of 15% of the fixed assets or 25 lakhs in relation to all its units as a whole.

[13.10] To appreciate the contention raised by the learned Assistant Government Pleader it would be necessary to carefully examine the relevant provisions of the Scheme of 1986.

Clause 4 of the Scheme is the definition clause. Sub-clause (e) defines "expansion" to mean increase in the value of fixed capital investment by not less than 25% of the net fixed assets by the existing project, and accompanied

by an increase in the production to the extent of at least 25% of the originally installed capacity. Diversification has been defined under sub-clause (f) to mean the launching of a new product line under the same company, firm or partnership provided the total fixed capital investment in such a diversification exceeds at least 25% of the value of the net fixed assets of the original project.

Clause 5 of the said scheme provides that the new industrial unit set up in eligible areas during the operative period of the Scheme will be eligible for capital investment subsidy as per the rates mentioned in Annexure-D to the said resolution.

Clause 11 of the said scheme provides that the rates of subsidy mentioned in Annexure D are aggregate rates of subsidies available under the schemes of Government of India and Government of Gujarat. The sanction and disbursement of State and Central subsidies will be in accordance with the respective schemes and within the total quantum and ceilings mentioned in Annexure-D.

Annexure-D provides for the aggregate rate of subsidy (inclusive of State and Central Subsidy). Different rates are provided for new units and for expansion/diversification. It is also provided that for expansion and diversification the total quantum of subsidy

throughout the life of the unit will not exceed the maximum subsidy available in that area for new units.

By Government Resolution dated 31st August, 1987 the scheme of 1986 was partially modified and it was provided that under the new scheme (1986-91) an eligible unit shall be entitled to subsidy, as per rates prescribed in Annexure-D of the Government Resolution dated 5th May, 1986 for each diversification irrespective of the number of diversifications, subject to financial limits as specified in Annexure-D for each diversification. It was also provided that if a unit undertakes one or more expansions under the new scheme (1986-91) the same will be entitled to a total maximum subsidy, for its one or more expansions not exceeding the maximum amount of subsidy admissible to a new unit in that area as per Annexure-D of the said Government Resolution dated 5th May, 1986.

[13.11] Upon perusal of the Government Resolution dated 31st August, 1987 it is clear that under the Scheme of 1986 it had been provided that an eligible unit shall not be entitled to have more subsidy for its one or more expansions as well as diversifications than the maximum subsidy entitled to that (original) unit as a new unit in that area. The said scheme also provided that total subsidy to such a unit

through out its life for all its expansions and/or diversifications shall not exceed the maximum subsidy that is available to a unit in that area, as prescribed in Annexure-D of the said Government Resolution dated 5th May, 1986. It is because the said Scheme provided a ceiling on the maximum subsidy to which the original unit would be entitled in respect of all expansions and diversifications that the Government was required to come out with a modification by virtue of the Government Resolution dated 31st August, 1987 directing that under the new scheme (86-91) an eligible unit shall be entitled to subsidy, as per rates prescribed in Annexure-D of the said Government Resolution dated 5th May, 1986 for each diversification irrespective of the number of diversifications, subject to financial limits as specified in Annexure-D for each diversification. However, insofar as the Scheme in question, viz. Scheme of 1977 is concerned, there is no such similar provision providing for a ceiling on the maximum subsidy to which the (original) industrial unit would be entitled. The respondents have also initially interpreted the Scheme accordingly, which is apparent from the opinion given by the Commissioner of Industries as well as from the fact that the State Level Committee had also sanctioned subsidy in respect of both the Sulphuric Acid as well as DNCB units at the relevant time. In the

circumstances, the contention raised by the learned Assistant Government Pleader that in absence of any such clarification in respect of the Scheme of 1977, the petitioner would not be entitled to subsidy in excess of the limit of Rs.25 lakhs, does not merit acceptance. Moreover, a subsequent Scheme cannot be made the basis for interpreting the provisions of the previous Scheme. In fact, looking to the modification in the Scheme of 1986, it appears that it was always the intention of the State Government to give cash incentive by way of cash subsidy to every diversification made by one and the same company. Hence, even if the various units established by the petitioner company were to be treated as diversifications, the petitioner would be entitled to the benefit of cash subsidy in respect of each of them.

[13.12] From the record of the case, it is apparent that it was always the case of the petitioner that Atul Products Ltd. is a Public Company having several independent industrial units manufacturing a large number of products. The DNCB Project was one such independent unit, and that the Company is the owner of these industrial units put up by it. It was the case of the petitioner before the authorities, as is borne out from the various correspondence on record, that factually, DNCB is a new product and the investment made therein cannot fall

under the definition of "expansion". As DNCB is not manufactured in one of the existing units of the Company, it cannot fall under the definition of "diversification". From the record, it does not appear to be the case of the respondents that the Sulphuric Acid unit and the DNCB unit are not separate identifiable units. Upon perusal of Annexure-I to the minutes of the its 81st Meeting of the State Level Committee held on 20th December, 1983 it is apparent that while sanctioning subsidy, M/s Atul Products Ltd., (D.N.C.B. Project) has been considered as a "New Unit" and not as diversification or expansion. However, in the minutes of the 119th State Level Committee meeting held on 28.4.1988, it has interalia been stated that " SLC discussed the case of M/s Atul Products Ltd. for State Cash Subsidy for its DNCB project under the 1977-82 scheme. It was observed by SLC that the unit was already sanctioned the State cash subsidy for this expansion project for Rs.13,48,500 at the rate of 15% investment of fixed asset." Hence, it appears that the State Level Committee has subsequently, after sanctioning the subsidy, by way of an after thought considered the DNCB unit of the petitioner company to be an expansion project. Moreover, from the minutes of the 99th meeting of the State Level Committee held on 27th May, 1986 it is apparent that for the first time instead of the original requirement of separate

identifiable investment, the concept of separate identifiable legal entity is brought into the picture to deny the petitioner company the benefit of cash subsidy in respect of its new units. It has been observed by the committee that various projects floated by this company (M/s Atul Products Ltd.) have no separate identifiable legal entity. Accordingly, the respondents have sought to deny the petitioner company the benefit of cash subsidy under the scheme on the ground that the units in question have no separate identifiable legal entity though there is nothing on record to show as to how the said concept has crept in or is at all relevant for the grant of cash subsidy to an eligible unit under the scheme.

[13.13] It may be pertinent to note that, in the affidavit-in-reply filed on behalf of the respondents, it has been averred that DNCB project is not an expansion of existing capacity but it is a new product line undertaken by one and the same industrial undertaking by increasing the fixed capital investment hence it is covered under the definition of expansion as per para 6(iv) c of Government Resolution dated 22.12.1977. Thus, it appears that the respondents are taking resort to the definition of diversification under the new scheme for the purpose of determining the eligibility of the petitioner's unit under the old scheme and have

accordingly classified the DNCB and Sulphuric Acid Units of the petitioner company as diversification and accordingly, in its 119th meeting held on 28th January, 1988, the State Level Committee has decided to cancel the sanction of cash subsidy accorded to the petitioner's DNCB unit. The expression "diversification" was not defined under the earlier scheme; hence, the meaning given to the said term under the Scheme of 1986 cannot be adopted with respect to the Scheme of 1977 to mean launching of a new product line under the same company, firm or partnership. In absence of any such meaning given to the term diversification in the old Scheme, the expression "new industrial undertaking" will have to be construed as defined under the said scheme.

[13.14] For the purpose of interpreting the true meaning of the expression "New Industrial Unit", it would be necessary to first construe the term "Industrial unit", as defined under the Scheme. "Industrial unit" has been defined under sub-clause (a) of clause (iv) of section 6 of the scheme to mean any industrial undertaking and suitable servicing unit, other than that run departmentally by the Government of India /State Government. Since the respondents have sought to interpret the term 'industrial undertaking' to mean the company as a whole it would be

necessary to examine the meaning of the said term. The expression "industrial undertaking" has not been defined under the Scheme, hence, it would be necessary to examine study the case law in this regard to find out as to how the said expression has been interpreted under other provisions of law. The leading decision on the point is the case of *Textile Machinery Corporation Ltd. v. C.T.I.* (1977) 2 SCC 368, which has been rendered in the context of the Income Tax Act, 1922 wherein the Supreme Court has held as follows:

"18. The assessee continues to be the same for the purpose of assessment. It has its existing business already liable to tax. It produced in the two concerned undertakings commodities different from those which he has been manufacturing or producing in its existing business. Manufacture or production of articles yielding additional profit attributable to the new outlay of capital in a separate and distinct unit is the heart of the matter, to earn benefit from the exemption of tax liability under Section 15C. Sub-section (6) of the section also points to the same effect, namely, production of articles. The answer, in every particular case depends upon the peculiar facts and conditions of the new industrial undertaking on account of which the assessee claims exemption under Section 15C. No hard and fast rule can be laid down. Trade and industry do not run in earmarked channels and particularly so in view of the manifold scientific and technological developments. There is great scope for expansion of trade and industry. The fact that an assessee by establishment of a new industrial undertaking expands his

existing business, which he certainly does, would not, on that score, deprive him of the benefit under Section 15C. Every new creation in business is some kind of expansion and advancement. The true test is not whether the new industrial undertaking connotes expansion of the existing business of the assessee but whether it is all the same a new and identifiable undertaking separate and distinct from the existing business. No particular decision in one case can lay down an inexorable test to determine whether a given case comes under Section 15C or not. In order that the new undertaking can be said to be not formed out of the already existing business, there must be a new emergence of a physically separate industrial unit which may exist on its own as a viable unit. An undertaking is formed out of the existing business if the physical identity with the old unit is preserved. This has not happened here in the case of the two undertakings which are separate and distinct."

[13.15] In the case of *Management of Hindustan Steel Ltd. v. The Workmen and others*, (1973) 3 SCC 564, the Supreme Court in the context of the provisions of the Industrial Disputes Act, 1947 held thus:

"10. The word undertaking as used in Section 25-FFF seems to us to have been used in its ordinary sense connoting thereby any work, enterprise, project or business undertaking. It was not intended to cover the entire industry or business of the employer as was suggested on behalf of the respondents. Even closure or stoppage or a part of the business or activities of the employer would seem in law to be covered by this sub-section."

[13.16] In the case of *Tata Iron and Steel Co. Ltd. v. State of Jharkhand and others*, (2005) 4 SCC 272, the Supreme Court in the context of the Jharkhand Industrial Policy, 2001 held that the provisions of the statute must be assigned a meaning having regard to the text and context thereof. The Apex Court did not agree with the High Court that the expression "industrial unit" or "existing unit" should be used in a generic sense to indicate the industry in its entirety and not each of its components. The Court was of the opinion that despite the fact that the appellant therein, as a juristic person is an assessee or a dealer within the meaning of the 1981 Act; and, thus, was required not only to get itself registered as such but also file one single return in respect whereof there may be one order of assessment; but the same does not prevent an assessee from claiming separate tax exemptions and/or tax benefits both in respect of its new industrial units as also its existing units.

[13.17] From a conspectus of the aforesaid decisions the following principles emerge:

- The true test of the new industrial undertaking is not whether the new industrial undertaking connotes expansion of the existing business of the assessee but whether it is all the same a new and identifiable undertaking separate and

distinct from the existing business.

- The expression 'industrial unit' as defined under the scheme should not be used in the generic sense to indicate the industry in its entirety and not its components.
- The word undertaking has to be construed in its ordinary sense connoting thereby any work, enterprise, project or business undertaking. The same does not cover the entire industry or business of the person concerned.

[13.18] Viewed in the light of the aforesaid principles enunciated by the Apex Court, this Court is of the view that each independent, identifiable unit of the petitioner company would be an industrial undertaking. And any such unit, which satisfies the conditions laid down under the scheme in respect of new industrial units, would be entitled to the benefit of cash subsidy under the scheme as a new industrial unit. The concept of separate identifiable legal entity, as is sought to be brought in by the respondents, is alien to the scheme as well as to the concept of industrial undertaking.

[13.19] Upon a plain reading of the Scheme of 1977, it is apparent that the same is

applicable to new industrial units in developing areas indicated in Annexure "I" to the resolution. There being no dispute that the units in question are set up in developing areas, what is required to be considered is as to whether the units fulfill the requirements of new industrial units under the Scheme. A new industrial unit under the Scheme is required to fulfill either of the following two conditions :

"[1] The same should have been commissioned on or after 1st November, 1977, or

[2] The unit should have made fixed capital investment as defined in sub-section (d) during the operative period of the Scheme."

From perusal of the record, there does not appear to be any dispute that the petitioner's Sulphuric Acid Unit and its DNCB Unit fulfill the requirements of new industrial unit as defined under sub-clause (b) of Clause 6(iv). The respondents, therefore, are not justified in holding that the petitioner company in its entirety is an industrial unit and that the petitioner company's the DNCB Unit and the Sulphuric Acid Unit are not new industrial units as envisaged under the scheme. The petitioner company is, accordingly, entitled to the benefit of cash subsidy under the Scheme in respect of both the said units.

[13.20] Moreover, it is settled legal position that a provision intended for promoting economic growth has to be construed liberally. The main intention behind the framing of "The New Industries Scheme for Cash Subsidy for industrial units to be set up in developing areas" is to encourage industries in the State. The Scheme was also intended to be an effective instrument of promoting orderly, balanced and sustained industrial growth throughout the State. In the circumstances, the Scheme has to be construed liberally so as to advance the objective of the Scheme.

In the case of *Bajaj Tempo Ltd., Bombay v. Commissioner of Income Tax*, (1992)3 SCC 78, the Apex Court while interpreting the provisions of section 15-C of the Income Tax Act, 1922 held thus:

"5. The section, read as a whole, was a provision, directed towards encouraging industrialization by permitting an assessee setting up a new undertaking to claim benefit of not paying tax to the extent of six per cent in a year on the capital employed. But the legislature took care to restrict such benefit only to those undertakings which were new in form and substance, by providing that the undertaking should not be, 'formed' in any manner in clause (I) of sub-section (2) of section 15-C. Each of these requirements, namely, formation of the

undertaking by splitting up or reconstruction of an existing business or transfer to the undertaking of building, raw material or plant used in any previous business results in denial of the benefit contemplated under sub-section (1). Since a provision intended for promoting economic growth has to be construed liberally, the restriction on it, too, has to be construed so as to advance the objective of the section and not to frustrate it."

In CIT v. Straw-board Manufacturing Company Ltd, 1989 Supp 2 SCC 523, the Apex Court held that the law providing concession for tax purposes to encourage industrial activity should be liberally construed.

[13.21] Insofar as the invocation of the doctrine of promissory estoppel is concerned, the Supreme Court in the case of *Bannari Amman Sugars Ltd. v. CTO*, (2005) 1 SCC 625 held as follows:

"19. In order to invoke the doctrine of promissory estoppel clear, solid and positive foundation must be laid in the petition itself by the party invoking the doctrine and bald expressions without any supporting material to the effect that the doctrine is attracted because the party invoking the doctrine has altered its position relying on the assurance of the Government would not be sufficient to press into aid the doctrine. The courts are bound to consider all aspects including the results sought to be achieved and the public good at large, because while considering the applicability of the doctrine, the courts

have to do equity and the fundamental principles of equity must for ever be present in the mind of the court."

Upon perusal of the averments made in the petition as well as the supporting material produced on record it is apparent that the petitioner has laid clear, solid and positive foundation as would be sufficient to press into aid the doctrine of promissory estoppel. The decision of this Court in the case of Gujarat State Financial Corporation v. M/s Lotus Hotels Pvt. Ltd. (supra) also supports the case of the petitioner. The petitioner had before establishing the units in question sought the opinion of the Industries Commissioner who is the competent authority under the Scheme as regards the eligibility of the proposed units to cash subsidy under the Scheme. The petitioner has thereafter acted on the basis of the said opinion and changed its position to its detriment. The State Level Committee has also supported the view taken by the Industries Commissioner by sanctioning subsidy in respect of the petitioner's Sulphuric Acid unit as well as its DNCB unit. From the minutes of the 99th meeting of the State Level Committee held on 27th May, 1986 it becomes clear that it is only at a later stage, (about five years after the grant of subsidy in favour of the petitioner's Sulphuric Acid Unit), that the State Level Committee on the basis of the view expressed in a DO letter dated 17th May, 1986 received from

the Deputy Secretary, IMED has reviewed its earlier decision and cancelled the subsidy sanctioned in respect of the DNCB Unit and sought to recover the subsidy disbursed to the Sulphuric Acid Unit. The petitioner has, therefore, rightly invoked the doctrine of promissory estoppel and the respondents are estopped from denying the benefit of cash subsidy under the scheme to the petitioner in respect of its aforesaid two units.

[13.22] In the above view of the matter, the question as to whether the State Level Committee has the power to review its own decision, is left open, to be decided in an appropriate case.

[13.23] For the afore-stated reasons, the impugned order dated 21/28th April, 1988 cancelling the subsidy in respect of the petitioner's DNCB unit, as well as the impugned communication dated 27th June, 1988 seeking to recover an amount of Rs.19,38,300/- paid to the petitioner towards cash subsidy in respect of its Sulphuric Acid unit cannot be sustained.

[14] The petition, therefore, succeeds and is allowed. The impugned order dated 21/28th April 1988 (Annexure-K) as well as the impugned communication dated 27th June, 1988 (Annexure-L) are hereby quashed and set aside.

The respondent authorities are directed to release the Cash Subsidy of Rs.13,48,500/- forthwith. At this stage, the question of interest on the said amount requires to be considered. While upholding the contention of Ms.Parikh, learned Advocate for the petitioner and rejecting the argument of the learned Assistant Government Pleader, this Court is of the view that the petitioner is entitled to payment of interest also. The learned advocate for the petitioner contended that the petitioner has been wrongfully deprived of the use of the moneys payable to it towards Cash Subsidy for its DNCB Unit for a considerable long period, it is, therefore, legally entitled to payment of interest thereon for the said period. As the petitioner has been wrongly denied Cash Subsidy which had been sanctioned in December, 1983, the contention appears to be well founded. It is, therefore, ordered that the respondent authorities shall pay the amount of Rs.13,48,500/- with running interest at 6% per annum from the date it became due and payable under the sanction letter dated 8th February, 1984 (Annexure "G") till the date of payment, within a period of six months from the date of receipt of a copy of this order. Rule is made absolute, accordingly, with costs.

[HARSHA DEVANI, J.]

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